



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2004

Ms. Bertha A. Ontiveros
Assistant County Attorney
El Paso County
Room 503
500 East San Antonio
El Paso, Texas 79901

OR2004-8919

Dear Ms. Ontiveros:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 211408.

The El Paso County Sheriff's Department (the "sheriff") received a request for a copy of the entire investigation file, including but not limited to teletypes for Cause No. 97-F04102. You state that the sheriff has released some of the requested information, but claim that the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes. Criminal history record information ("CHRI") obtained from the National Crime Information Center ("NCIC") or the Texas Crime Information Center ("TCIC") is confidential under federal and state law. Federal regulations prohibit the release to the general public of CHRI that is maintained in state and local CHRI systems. See 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given") and (c)(2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to

receive the information itself"); *see also* Open Records Decision No. 565 at 10-12 (1990). CHRI is defined under section 411.082 of the Government Code as

(2) information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.

Gov't Code § 411.082(2). After carefully reviewing your representations and the submitted information, we find that no portion of the information constitutes CHRI as defined by section 411.082(2). Accordingly, we conclude that the sheriff may not withhold any portion of the submitted information under section 552.101 of the Government Code.

You also claim that some of the submitted information is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides, in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, the sheriff must withhold the marked motor vehicle information under section 552.130. The sheriff must release all remaining information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

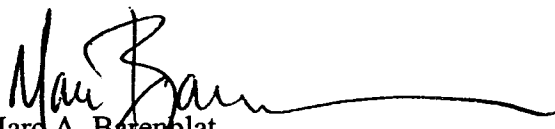
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,


Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/jh

Ref: ID# 211408

Enc. Submitted documents

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(w/o enclosures)